vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2641 OF 2005

Miss Roda F Tata ... Petitioner

V/s.

Mr.Kekobad Dossabhoy Doongriwalla
& Anr. ... Respondents

Mr.P.S. Dani for Petitioner
Mrs.Anjali Chandurkar i/b M/s.Purnanand & Co. for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 21, 2005**

P.C.:

. This Petition challenges the order of the appellate Court setting aside the order of the trial Court, dismissing the suit filed by the respondents.

2. The suit for ejectment was filed on the grounds contained in sections 13(1)(k) and 13(1)(l) of the Bombay Rent Act i.e., non-user of the suit premises continuously for a period of six months without reasonable cause and acquisition of suitable alternate residence. According to the Respondents, the Petitioner was a co-owner of a building known as Jer Terrace. She had acquired the vacant possession of a tenament in that building some time in 1986. The respondents claimed that the petitioner was residing in those premises and

had therefore, not used the suit premises continuously for a period of six months prior to the date of the filing of the suit. On evidence being led, the trial Court dismissed the suit. The trial Court was of the view that there was ample evidence on record to indicate that the Petitioner was residing in the suit premises at all times and, therefore, the ground under section 13(1)(k) was not established by the respondent. The trial Court after observing that the Petitioner had obtained possession of the flat No.2 in Jer Terrace on 17.11.1986 has held that the suit could not be decreed on the ground of section 13(1)(l). The trial Court was of the view that since the Petitioner had already sold the building known as Jer Terrace, it could not be said that she had acquired a suitable alternate residence. The trial Court has considered the grounds under sections 13(1)(k) and 13(1)(l). The trial Court was of the view that since the respondents had not been able to establish that the Petitioner was not residing in the suit premises without reasonable cause for a period of six months prior to the date of filing of the suit it could not be concluded that she had acquired alternate accommodation.

3. Aggrieved by this judgment, the respondent-landlords preferred an appeal before the

Small Causes Court. The appellate Court has decreed the suit on the ground of acquisition of suitable alternate residence and non-user of the suit premises without reasonable cause for six months preceding the date of the suit.

4. Mr.Dani appearing for the Petitioner submits that the appellate Court has erred in decreeing the suit. He submits that the trial Court has rightly held that the Petitioner was residing in the suit premises continuously and in any event for six months preceding the date of filing of the suit. He submits that acquisition of a suitable residence as contemplated under section 13(1)(l) would mean acquisition of a residence after the Act came into force and through the Petitioner's own means. He submits that the building known as Jer terrace was the ancestral property of the Petitioner who was a co-owner of the same with her brother. According to the learned Advocate, merely because a tenament in that building became available for occupation by the Petitioner, it would not necessarily mean that the Petitioner had acquired suitable alternate residence. According to the learned Advocate, acquisition of a residence in an ancestral property would not fall within the purview of section 13(1)(l).

5. Ms.Chandurkar, appearing for the respondents, submits that the trial Court had erred in considering that the provisions contemplated under sections 13(1)(k) and 13(1)(l) were dependent on each other. The trial Court according to her had dismissed the suit only because it came to the conclusion that the Petitioner was always residing in the suit premises. She submits that the trial Court has not considered the other issue regarding acquisition of suitable alternate residence. The learned Counsel submits that this error has been rectified by the appellate Court who has held that acquisition of this premises in Jer Terrace should result in decreeing the suit on the ground stipulated in the provisions of section 13(1)(l). She submits that after the acquisition of premises, the Petitioner sold the building for 47 lacs during the pendency of the present suit. Therefore, according to her, there is no need for this Court to interfere under Article 227 of the Constitution of India.

6. A perusal of the order of the trial Court and the appellate Court would indicate that the trial Court has completely ignored the provisions of section 13(1)(l). Assuming the Petitioner had made out a case that she was continuously residing in the suit premises and that therefore, the ground contemplated in section

13(1)(k) was not available to the landlord, the trial Court ought to have considered the issue regarding acquisition of suitable alternate residence. The submission of the Mr.Dani that acquisition of a tenament in an ancestral property is not contemplated under section 13(1)(l) is without merit. Section 13(1)(l) reads thus:

> 13(1) Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -
> ...
> ...
>
> (l) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted to suitable residence.

7. In my view, once the Petitioner had acquired vacant possession of a tenament in Jer Terrace, it would mean that the respondents had a ground available to eject the Petitioner under section 13(1)(l). It is for the tenant then to establish that the tenament acquired by her was not a suitable residence. In my view, the appellate Court has considered the position in law and the facts and has given a finding based on the evidence on record. There is no infirmity in the order of the appellate Court. Petition dismissed.

8. Mr.Dani, learned Counsel for the Petitioner seeks a stay of this order. Stay granted for 12 weeks from today on the usual terms.